

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**San Diego Gas & Electric Company,
Complainant,**

v.

Docket No. EL00-95-045

**Sellers of Energy and Ancillary Service Into
Markets Operated by the California
Independent System Operator Corporation
and the California Power Exchange,
Respondents.**

**Investigation of Practices of the California
Independent System Operator and the
California Power Exchange**

Docket No. EL00-98-042

**ORDER DENYING MARKETERS JOINT MOTION TO CONFINE
DISTRIBUTION OF ISO DATA AND SHORTENING PERIOD FOR ANSWERS
TO GENERATORS MOTION TO AMEND PROTECTIVE ORDER**

(Issued August 27, 2001)

On August 20, 2001, the Marketer Group¹ filed a joint motion to confine the ISO's data distribution and argued, inter alia, that the ISO should not distribute individual market participant data to all participants and that the Protective Order is inadequate in this respect. The joint movants further argue that the ISO's data submission is overly broad and that the size of the ISO data submissions are too large and should be broken down to avoid technical problems. Given the time constraints, my order of August 22, 2001 shortened the answering period for this motion to August 24, 2001. I have received answers in opposition to the joint motion from the ISO, California Parties², Generators³, the City and County of San Francisco, and Trial Staff. The Generators answer includes a

¹ The specific parties are listed in n.1 of the joint motion.

² The specific parties are listed at page 1 of the answer.

³ The specific parties are described at page 1 of the answer.

motion to amend the Protective Order to include proposed provisions that would prevent disclosure to "competitive duty personnel". The Generators request that I not rule on the joint motion until after receipt of comments on their motion and that I shorten the time for responses to their motion to August 29, 2001. Good cause is present to rule on the joint motion and to shorten the period for filing answers to the Generator's motion to amend the Protective Order to August 29, 2001.

The joint motion is denied for the following reasons. The ISO transaction-specific data for the 1-year period in issue, the nature and distribution of which the joint movants seek to limit, is required by the Commission's July 25 order to address the issues set for hearing-- the level of the market clearing price and refund liability of the market participants. The Commission required the ISO to provide this data to "further develop the factual record so that the refund methodology presented in this order may be implemented", and required me to certify proposed findings of fact with regard to the level of the mitigated market price and the refund liability of the market participants. Consistent with the July 25 order, the Chief Judge issued an Protective Order on August 7, 2001, as corrected, the adoption of which was proposed by the joint movants and others, see Staff motion at 2, to ensure that the "information and data required to be filed by the ISO on August 9 must be made available. . .[to] all parties that have executed the non-disclosure statement provided for in the Protective Order". I reiterated these requirements at the August 13 prehearing conference. Tr. at 73. The trial schedule in which the joint movants concurred established additional dates beyond August 9 for the ISO to complete provision of the requisite data and the California PX to provide requisite data. The cases cited by the joint movants in support of proposed restrictions on disclosure of the data to the parties are inapposite. Last, there are few specifics to demonstrate alleged competitive harm with regard to seller strategies and costs. Even if this was not the case, on balance, I agree with the ISO that the joint movant's proposed restrictions "would hopelessly confound the decisional process and fundamentally prejudice the due process rights of those representing the interest of buyers." ISO answer at 2.

Because of time constraints, Staff has been provided with an advance copy of this order and is requested to provide it to the maximum extent practical to the active participants on the restrictive service list. Participants who file answers to the Generators motion shall provide me concurrently by email and fax with a courtesy copy that shows the filing date of the answer.

For the future, any further proposals to amend the Protective Order should first be vetted by a representative committee of active participants, and then made the subject of a motion in the event that a consensus can not be achieved. The participants are reminded that paragraph 11 of the Protective Order requires all participants to a dispute to use their best efforts to resolve the dispute before raising the matter with me.

On an unrelated matter, I do not want to be provided with copies of data requests except and unless they are the subject of a skeletal motion to compel, as we had discussed at the August 13 prehearing conference.

Bruce L. Birchman
Presiding Administrative Law Judge